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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/494,096	01/28/2000	Gary A. Bannon	HS 102	3034

7590 01/02/2004

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EXAMINER

HUYNH, PHUONG N

ART UNIT PAPER NUMBER

1644

DATE MAILED: 01/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/494,096	Applicant(s) BANNON ET AL.	
	Examiner Phuong Huynh	Art Unit 1644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 09 December 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 37-46 and 56-61.

Claim(s) withdrawn from consideration: None.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 3.

Continuation of 5. does NOT place the application in condition for allowance because:

The proposed amendment to claims 37-46 and 56-61 are still drawn to any nucleotide molecule encoding any modified food allergen.

Claims 37-46, and 56-61 are rejected under 35 U.S.C. 112, first paragraph for enablement and written description for the same reasons of record, (Final Office Action mailed 7/30/03).

Claims 37-46 and 56-60 are rejected under 35 U.S.C. 112, first paragraph for New matter for the same reasons of record.

Claims 41-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the same reasons of record.

Claims 37-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burks et al (of record, Eur. J. Biochem. 245: 334-339, April 1997; PTO 892) in view of Evens et al (Therapeutic Drug Monitoring 15: 514-520, 1993; PTO 892) for the same reasons of record.

Claims 37-46 and 56-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley et al (Archives of Biochemistry and Biophysics 342(2): 244-253, June 1997; PTO 1449) in view of Evens et al (Therapeutic Drug Monitoring 15: 514-520, 1993; PTO 892) for the same reasons of record.

Claims 37-45 and 53-67 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, and 7 of U.S. Patent No. 6,486,311 B1 (Nov 2002; PTO 892) for the same reasons of record.


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